

police officers began to harass Berliner regarding her possession of a firearm in the New York." Paragraph 10 goes on to state that "[d]espite the lack of probable cause to believe that Berliner was committing a crime in New York, defendant police officers arrested Berliner for felony possession of a firearm under Penal Law Sections 265.03 and 265.02-4." Moreover, the first cause of action, rather than limiting itself to excessive force, states that "[d]efendants police officers and other unknown officers acting under the color of law subjected Plaintiff to the deprivation of her right to be free from unreasonable searches and seizures by the Constitution and the laws of the United States, including but not limited to excessive use of force." Finally, the proposed amended complaint continues to state facts relating to the claims against JetBlue – although not the claims themselves – that were previously dismissed. Counsel has thus created an ambiguity as to which claims plaintiff intends to pursue, requiring the remaining defendants to oppose the reinstatement of claims that plaintiff may or may not be asserting, and requiring this Court to determine which claims plaintiff intends to prosecute.

Based on plaintiff's reply memorandum of law, which makes no defense of any claims other than excessive force that might be asserted in the amended complaint, the Court partially grants the motion to reinstate this case *only* to the extent that plaintiff is pursuing a claim for excessive force. All allegations relating to misconduct by JetBlue or the lack of probable cause against the remaining defendants are stricken. The second claim for relief, under Monell v. Dep't of Social Servs., 436 U.S. 658 (1978), is not allowed because it alleges only conclusions and general characterizations, and thus does not meet the standard of pleading a plausible claim under Ashcroft v. Iqbal, ---U.S. ----, 129 S. Ct. 1937 (2009), and Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

By separate Order, the Court will set this matter down for a status conference. The Court expects discovery and resolution of the excessive force claim to proceed expeditiously.

SO ORDERED.

/s/(BMC)

U.S.D.J.

Dated: Brooklyn, New York
February 14, 2011